IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/03/2003

CORAM

THE HON'BLE MR. JUSTICE K. SAMPATH

W.P.No.43590 of 2002
and
W.P.M.P.No.64079 of 2002

Helen, P.
W/o J. Jebasingh,
No.30, Gokhale Road,
Sokkikulam,
Madurai 2. ... Petitioner

-Vs-

1. The Secretary to Government,
Government of Tamil Nadu,
Backward Classes and Most
Backward Classes Welfare
Department, Fort St. George,
Chennai 600 009.

2. The Director of Medical Education,
EVR Periyar High Road,
Kilpauk, Chennai 600 010.

3. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, EVR Periyar High Road,
Kilpauk, Chennai 600 010.

4. The Secretary,
Medical Council of India,
New Delhi. ... Respondents

!For Petitioner ... Mr.S. Natarajan

^For Respondents ... Mr.V.R. Rajasekaran.
Special Government
Pleader (Edn.)

This writ petition is filed under Article 226 of the
Constitution of India for a writ of mandamus as stated therein.

:ORDER
By consent the main writ petition itself is taken up.
2. The prayer is for a mandamus to the respondents to allot one seat to the petitioner in the Post Graduate Course for the Academic Year 2002-2003 from the increased 3 seats as per the prospectus as directed by this Court in W.P.No.18200/2002 dated 13-8-2002 and as modified on 25.10.2003.

2. The petitioner's case is as follows:
She completed her M.B.B.S. Course during February, 1994. She also got her Diploma in Obstetrics and Gynaecology. She got selected through Tamil Nadu Public Service Commission in April, 1999 and is now working as Assistant Surgeon in the Government Hospital, Melur. She has also completed the required two years of service in the Primary Health Centre. She became eligible to apply for Post Graduate Degree Course. She also applied for the same for the year 2002-2003. She belongs to Nadar Christian Community, which is a Backward Community. She is eligible to compete with other students of open category on merits also. In the entrance examination held for admission to Post Graduate Courses for the year 2002-2003 her rank among the service candidates was 61, her entrance test mark being 63.60. By communication dated 17-4-2002, she was called for counselling on 29-4-2002 by the Selection Committee. She attended the same and opted for Post Graduate Degree in Obstetrics and Gynaecology. She was told that all the seats for open category and backward class were filled up and that her position in open category in waiting list was No.2 for Post Graduate Degree in Obstetrics and Gynaecology. She opted to stay in the waiting list, so that there was possibility of being accommodated in case seats were available. Though there were seats available for other disciplines, she did not opt for them. She was willing to wait and take a chance. As per clause 29 of the Prospectus, since a candidate has to appear for counselling only once, even if seats are available in future in Post Graduate Degree in Obstetrics and Gynaecology, she would not be called for second counselling had she joined in some other Post Graduate Degree Course. She chose to wait, even at the risk of losing the available Post Graduate Degree Course. As per the Tamil Nadu Backward Classes, Scheduled Caste and Scheduled Tribes (Reservation of Seats in Educational Institutions and of appointments or Posts in the Services under the State) Bill, 1993, which later became Act 45 of 1994 and was included in the Ninth Schedule to the Constitution by the Constitution (Seventy Sixth Amendment) Act, 1994 enacted by the Parliament to get protection under Article 31-B of the Constitution.
The percentage of reservation as stipulated in the Prospectus is as follows:

Open Competition (OC): ... 31%
Backward Class (BC): ... 30%
Most Backward Class (MBC)... 20%
Scheduled Caste (SC): ... 18%
Scheduled Tribe (ST) ... 1%

This Act was challenged before the Supreme Court in INDRA SAWHNEY VS. UNION OF INDIA (1992 Supp.3 SCC 217). The Supreme Court gave an interim direction to create additional seats equal to the number of seats,

which the open category candidates have been denied selection because of the 69% policy. Similar directions are being issued from the Academic Year 1994 onwards by the Supreme Court. An attempt was made to seek amendment of the orders before the Supreme Court. The Supreme Court rejected the request for variation of the earlier order in VOICE (CONSUMER CARE) CUNCIL VS. STATE OF TAMIL NADU (1996(11) SCC 7 40). As the direction of the Supreme Court was not complied with, the writ petitioner filed W.P.No.18200/2002 to increase the number of seats and to allot one seat to her. By order dated 13-9-2002 this Court directed the respondents to take action expeditiously for implementing the direction of the Supreme court in respect of admission to Post Graduate Course for the year 2002-2003 and to give a seat to the petitioner if she was found eligible or fell within the minimum or cut off mark. As no steps were taken by the respondents, the petitioner made a representation on 2.9.2002. The third respondent sent a communication dated 11.9.2002 stating that by applying 69%, it is 4 seats for service quota and that as per the direction of the Supreme Court and the High Court, by applying 50% the total seats in M.D. (O&G) is modified as 7 for service quota in open category, that the cut off mark by applying 69% and 50% reservation is 65.68 and 64.61 respectively and that as the petitioner's cut off marks was 63.60, she did not fall within the eligible zone for consideration for admission. It is clear that 3 seats are to be filled up from the service candidates in open competition and the 3 seats have to be filled up from the candidates, who had opted for being in the waiting list without going for any other speciality. The petitioner is eligible for allotment in the increased seats. By order dated 13-8-2002 this Court has clarified that the procedure shall be as per the prospectus and if as per the prospectus she is eligible, she will be given a seat. There is no provision for applying cut off mark in the selection in the Post Graduate Course and as the seats are filled up by the process of counselling depending upon the availability and option of the candidates, fixing the cut off marks is misnomer. All the seats are to be filled up from the available candidates in the waiting list. Subsequent correspondence having failed to evoke any response, the present writ petition has been filed. The writ petitioner is entitled to allotment of a seat in Obstetrics and Gynaecology Course.

3. The third respondent has filed a detailed counter and also given tables showing the position of the various candidates and their eligibility. It is stated in the counter that the Selection Committee as per the policy of the State Government, has completed the selection for Post Graduate admission following 69% Rule of Reservation. As per the rank position of the petitioner, she was placed as Serial No.6 in the waiting list for inservice candidates. The total marks scored by the last candidate both under open category and the service category and the mark scored by the petitioner are shown in the tables set out:

TABLE □ 1

OOC CATEGORY (OPEN OPEN COMPETITION) 69% RULE OF RESERVATION

E.E.No. Name of Community Status Total Selected Candidate marks Community

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10128 Kavitha Chenthil BC PRI 72.25 OOC

14890 Hima Bindu, P. OC PRI 72.03 OOC
10378 Renuka Devi, B. BC PRI 71.41 OOC
13836 Deepa, S. BC SER 71.41 OOC
12146 Helen,P. BC SER 63.60 Wait List

TABLE - 2
SOC CATEGORY (SERVICE OPEN COMPETITION) 69% RULE OF RESERVVATION

E.E.No. Name of Community Status Total Selected
Candidate marks Community

12851 Cordelia Boaz BC SER 67.12 SOC
15354 Sujjanna, A.L.
Manuel BC SER 66.85 SOC
13252 Sumithra, D. BC SER 66.04 SOC
10349 Malarselvi, J. BC SER 65.68 SOC
12146 Helen,P. BC SER 63.60 Wait List

TABLE 3
OOC CATEGORY (OPEN OPEN COMPETITION) 50% RULE
OF RESERVATION

E.E.No. Name of Community Status Total Selected
Candidate marks Community

10128 Kavitha Chenthil BC PRI 72.25 OOC
14890 Hima Bindu, P. OC PRI 72.03 OOC
10378 Renuka Devi, B. BC PRI 71.41 OOC
13836 Deepa, S. BC SER 71.41 OOC
10389 Chandrakala, C. BC PRI 70.85 OBC
12680 Latha, T.s. BC PRI 70.59 OBC
11173 Devi, A. BC PRI 69.88 OBC

TABLE 4
SOC CATEGORY SERVICE OPEN COMPETITION) 50% RULE
OF RESERVATION

E.E.No Name of Community Status Total Selected
Candidate marks community

12851 Cordelia Boaz BC SER 67.12 SOC

15354 Sujjanna, A.L.
Manuel BC SER 66.85 SOC
13252 Sumithra, D. BC SER 66.04 SOC
10349 Malarselvi, J. BC SER 65.68 SOC
13812 Kasthuri, V. BC SER 65.14 SBC
10859 Suresh, K. BC SER 65.13 SBC
15326 Ammani, T. BC SER 64.61 SBC
12146 Helen, P. BC SER 63.60 Wait List

As per Table-4, it would be clear that the petitioner did not score the required marks for being admitted either under the open category or as an inservice candidate. Even if the communal reservation is restricted to 50%, then cut off marks for the last candidates eligible for admission under open category would be 69.88, which is higher than the marks scored by the petitioner. Likewise, if 60% reservation is applied for the seats meant for service category, the cut off marks would be 64.61. The petitioner is not coming within the zone of consideration for admission in M.D. (O & G) Course for the Academic Year 2002-2003 under any one of the two methods of admission stated above.
The details of the seat allocation for open category (Non-Service) as per the 69% Rule of Reservation are as follows:

OPEN COMPETITION (NON-SERVICE)
(Both Private and Service Candidates are eligible)
TOTAL SEATS 14
Apportionment of seats as per 69% Reservations

Category Total Seats OC BC MBC SC ST

Percentage 31% 30% 20% 18% 1%

Seats available
in open category 14 4 4 3 3 -

Cut off marks - 71.41 69.81 65.80 63.64 -

In the case of open competition (Non-service), both private and service candidates are eligible. In the case of seats meant for service candidates, only service candidates are eligible. The tabular statement below shows the apportionment of seats as per 69% Rule of Reservation.
SERVICE
(Service candidates alone are eligible)
TOTAL SEATS 14
Apportionment of seats as per 69% Rule of Reservation

Category Total OC BC MBC SC ST

Seats

Percentage 50% 31% 30% 20% 18% 1%

Seats avail-
able in open
category 14 4 4 3 2 -

Cut off marks 65.68 64.23 59.83 57.79 -

The petitioner having scored 63.60, which is less than 64.61, the cut off marks for open (Service) under 50% Rule of Reservation, she is not eligible for claiming admission for the seats exclusively set apart for service candidates as per 50% Rule of Reservation. The petitioner is under misconception that three seats were created under open category both for the open (Non-service and service) candidates as well as open (Inservice) candidates for the purpose of implementing 50 % Rule of Reservation. The question of creating an additional seat under open Non-service category as per 50% Rule of Reservation would arise only when the petitioner scores more than the cut off marks 69.88 fixed under 50% Rule of Reservation for open (Non-service and service) candidates. Likewise, the creation of an additional seat under open inservice category as per 50% Rule of Reservation would arise only when the petitioner scores more than the cut off marks 64.61 fixed under 50% Rule of Reservation for inservice candidates. The general rank has no bearing for the individual wait list. The petitioner is making a claim as if three additional seats were created for inservice open category candidates for the purpose of implementing 50% Rule of Reservation. The necessity to create any seat to accommodate the petitioner by implementing 50% Rule of Reservation does not arise for the reason that the petitioner scored only 63.60 marks, which is less than the cut off marks.

4. A reply affidavit has been filed by the writ petitioner reiterating the contents in the main affidavit. It is stated in the reply that the averment that the petitioner is placed sixth in the waiting list is far from truth. Four persons, viz. (1) Kasthuri, V. (2) Suresh, k. (3) Ammani, T. as shown in the Table-4 of the counter and another person Anitha Virgin Kumari, who had been already allotted seats under the BC have been purposely taken into account to eliminate the petitioner and others in the wait list. When filling up the increased seats, there is no question of taking into account the persons, who have been already selected. The seats have to be increased by 19% and have to be filled up from the non-selected candidates according to their wait list following clause 29 of the Prospectus. Following is the list of service candidates, who have opted for M. D. (O & G) under 69% reservation:

S. Rank Name of candidate Community Marks Selected
No. in Community
merits
list
---

1. 168 Cordelia Boaz BC 67.12 SOC
2. 193 Sujjanna A.L. Manuel BC 66.85 SOC
3. 234 Sumithra, D. BC 66.04 SOC
4. 264 Malar Selvi, J. BC 65.68 SOC
5. 289 Kasthuri BC 65.14 SBC
6. 290 Suresh, K. BC 65.13 SBC
7. 318 Ammani, T. BC 64.61 SBC
8. 343 Anitha Virgin Kumari BC 64.23 SBC
9. 375 Karpagam Shanmugam BC 63.88 Wait List
10. 392 Helen, P. BC 63.60 Wait List
11. 399 Anbu Selvi, T. BC 63.41 Wait List
12. 419 Mallika, K.S. BC 63.19 Wait List

In the above list, the first four persons, i.e. up to Malar Selvi, J. were selected under the O.C. category and next four, i.e. up to Anitha Virgin Kumari were selected under the BC category. The petitioner being the tenth person was kept under waiting list No.2, both under open as well as under BC categories. After filing of this writ petition, the ninth person Karpagam Shanmugam has been selected under All India Quota and the petitioner's position now is waiting list No.1 in OC and BC categories. This is also fortified by the fact that when one open competition category seat fell vacant due to non-joining of a selected candidate called Kavitha, as per the procedure, wait list No.1 from non-service and wait list No.1 from inservice candidates were called for counselling on 27-12-2002. The petitioner being No.1 in the wait list for service candidate, was called for counselling by communication dated 21-12-2002. She also attended the counselling. But, non-service candidate was selected in the counselling. If the petitioner was not in the wait list No.1 for inservice, she would not have been called for counselling at all. The effect of the judgment of the Supreme Court in VOICE (CONSUMER CARE) COUNCIL VS. STATE OF TAMIL NADU (1996(11) SCC 740) is only to increase the number of seats equal to the number of candidates, who have been denied because of 69% reservation. It is only for the purpose of calculating the number of seats to be increased, the so called cut off mark can be relevant, but not to eliminate the already selected candidates under 69% quota nor the position of the wait listed candidates. The respondents are bound to increase the three seats as stipulated in the VOICE (CONSUMER CARE) COUNCIL case by the Supreme Court and they could not find out some ground to get away from that. Even assuming without accepting that the mode of selection is to be on the basis of the presumptive cut off marks as averred in the counter affidavit, the petitioner would be eligible for allotment as she is coming within the cut off mark for BC quota. The respondents, who have ventured to find out the presumptive cut off mark for OC, had the 50% reservation been followed, have conveniently failed to see that position of the petitioner among the service candidates being 10, is eligible for allotment under the BC quota. The respondents have conveniently omitted to say about filling up of the seats in BC category, after filling up the OC category with the already selected candidates under the BC category. After the seventh candidate Ammani, Anitha Virgin Kumari is the eighth candidate, Karpagam Shanmugam the ninth and the petitioner is the tenth. Since Karpagam Shanmugam has already joined in All India Quota, the petitioner

comes next to Anitha Virigin Kumari under the BC category. The respondents are disobeying the order of the Supreme Court. The respondents having admitted in the communication dated 11-9-2002 that three seats are increased for SOC as per the direction of the Supreme Court and the High Court, are estopped from taking the stand that seats need not be increased. The writ petition has to be allowed.

5. The learned Counsel for the petitioner and the learned Special Government Pleader were at pains to explain their respective stands with tabular statements. Heard arguments on both sides.

6. The Supreme Court in VOICE (CONSUMER CARE) COUNCIL VS. STATE OF TAMIL NADU (1996(11) SCC 740) explained the purport of its earlier order dated 18-8-1994 as follows:

"First, make the admissions applying the rule of 69% reservation in favour of Backward Classes, Schedule Castes and Scheduled Tribes. Second, the additional seats created by virtue of the orders of this Court be filled with the general category candidates. The number of seats so created was equal to the number of seats which the general candidates would have got if the rule of fifty per cent total reservation had been applied."

The Supreme Court further explained as follows:

"This order in effect respected the rule of 69 per cent devised by the Government of Tamil Nadu and sanctioned by the Tamil Nadu Act 45 of 1994 while, at the same time, removing the grievance of the general category candidates by creating additional seats for them for that year. In other words, the sanctioned strength of seats in every college are being allotted exclusively in accordance with the sixty nine per cent reservation rule. Only the additional seats, which are created by and only because of the orders of this Court are being provided to general category candidates on the basis of merit, which category includes Backward classes, Scheduled Castes and Scheduled Tribes as well. It is significant to notice in this connection that according to the figures supplied by the Government of Tamil Nadu for the Academic Years 1993-94 and 1994-95, more than eighty per cent of the seats in the general category are being taken away by the students belonging to Backward Classes on the basis of their own merit. As fully explained and illustrated in the order dated 18-8-1994, the students belonging to Backward Classes are getting fifty per cent of the total seats on the basis of reservation and more than 80 per cent of the seats in the general category (open competition category) on the basis of their own merit. There is no reason to believe that the situation is different this year. Thus, the bulk of the additional seats directed to be created by this Court year after year (since 1994-95) are again going to students belonging to Backward Classes. The order of this Court is thus not only upholding the rule of fifty per cent ceiling on reservation affirmed by the Special Bench of this Court in INDRA SAWHNEY VS. UNION OF INDIA (1992 SUPP.(3) SCC 217), but is in truth operating to the advantage and benefit of a number of Backward Class students. Many of the Backward Class students, along with certain other candidates belonging to non-reserved categories, who would not have otherwise got admission into these

courses, are getting seats by virtue of these orders. ..... Only as an interim measure, certain additional seats are being created and they are being allotted to general category candidates which in Tamil Nadu really means providing the bulk of them to students belonging to Backward Classes."

7. The Tabular statement below shows the position as per 69% Rule of Reservation.

P.G. Degree/Diploma Courses 2002-2003
Wait listed and selected candidates under Service SOC Category
E.Subject Code: 27 M.D. Obstetrics and Gynaecology

Sl. No.
Ent.No.
Name
x
Total
SER/PRI
1
12851
Cordelia Boaz
BC
67.12
Ser Select under SOC
2
15354
Sujanna A.L. Manuel
BC
66.85
Ser Select under SOC
3
13252
Sumithra D
BC
66.04
Ser Select under SOC
4
10349
Malar Selvi J
BC
65.68
Ser Select under SOC
5
13812
Kasthuri V
BC
65.14
Ser Select under SOC
6
10859
Suresh K

BC
65.13
Ser Select under SOC
7
15326
Ammani T
BC
64.61
Ser Select under SOC
8
15375
Anitha Virgin Kumari
BC
64.23
Ser
9
13573
Karpagam Shanmugam
BC
63.88
Ser
10
12146
Helen, P.
BC
63.60
Ser
11
13493
Gayathiri, M.
MBC
61.27
Ser
12
12365
Indirani, T.V.
MBC
60.81
Ser
13
14840
Vinitha Padmini Mary
BC
60.37
Ser
14
10765
Sugam, S.R.
BC
60.17
Ser

15
12940
Shanthi, K.
MBC
59.83
Ser
16
12990
Hemamalini, V.
MBC
59.44
Ser
17
11578
Abiramavalli, K.
MBC
58.81
Ser
18
14334
Thangathai, S.
SC
58.59
Ser
19
11962
Gomathi, P.K.
BC
58.30
Ser
20
14287
Vijaya, B.
SC
57.93
Ser
21
12128
Yasodharani, T.
BC
57.85
Ser
22
15154
Boopathy, K.
SC
57.79
Ser
23
13843
Krishna Kumari, V.

MBC
57.57
Ser
24
12334
Vijayalakshmi, C.
BC
56.89
Ser
25
11637
Subha, S.S.
BC
56.06
Ser
Note: x Community
8. The petitioner figures as No.10. The total number of candidates, who got selected on account of 69% Rule of Reservation is 4 and the candidates are (1) Cordelia Boaz, (2) Sujjanna A.L. Manuel, (3) Sumithra, D. and (4) Malar Selvi, J. By reason of the increase in the number of seats as per the direction of the Supreme Court, 3 candidates (1) Kasthuri, V. (2) Suresh, K. and (3) Ammani, T. got into the bandwagon. It is the case of the petitioner that Anitha Virgin Kumari gets the eighth seat, Karpagam Shanmugam the ninth and Karpagam Shanmugam having got a seat in the All India wait, the petitioner comes next to Anitha Virgin Kumari and she is entitled to get a seat.
9. The list of the 28 admitted candidates furnished by the learned Special Government Pleader is as follows:
P.G. Degree/Diploma 2002-2003 Session
List of Selected Candidates for P.G. DEG/DIP Courses 2002-2003 Session

Course Code: 27 Course Name: M.D. Obstetrics and Gynaecology

Total Seats: 28 Open: 14 Service: 14
Open Quota Seats: OC: 4 BC: 4 MBC: 3 SC:3

Sl No
Reg. No
Name of the Candidate
Com
Ser/ Pri
TMark
X

1
10128

Kavitha Chenthil
BC
Pri
65.25
7
72.25
OOC
01
2
14890
Hima Bindu, P.
OC
Pri
69.03
3
72.03
OOC
01
3
10378
Renuka Devi, B.
BC
Pri
70.47
1
71.47
OOC
01
4
13836
Deepa, S.
BC
Ser
67.41
4
71.41
OOC
01
5
10389
Chandrakala, G.
BC
Pri
68.85
2
70.85
OBC
02
6
12680
Latha, T.S.

BC
Pri
67.59
3
70.59
OBC
07
7
11173
Devi, A.
BC
Pri
65.88
4
69.88
OBC
03
8
12579
Deepa, G.S.
BC
Pri
63.81
6
69.81
OBC
07
9
10411
Anuradha, M.
MBC
Pri
68.40
1
69.40
0MBC
01
10
10144
Nalli Chandra, R.
MBC
Ser
60.12
6
66.12
0MBC
01
11
11496
Geetha Rani, S.
MBC

Pri
64.80
1
65.80
0MBC
05
12
12829
Kalamani, M.
SC
Ser
59.31
5
64.31
OSC
07
13
10015
Mirunalini, S.
SC
Pri
63.27
1
64.27
OSC
01
14
11901
Suganya Devi, S.
SC
Pri
62.64
1
63.64
OSC
02
15
12851
Cordelia Boaz
BC
Ser
60.12
7
67.12
SOC
01
16
15354
Sujjanna A.L. Manuel
BC
Ser

59.85
7
66.85
SOC
03
17
13252
Sumithra, D.
BC
Ser
59.04
7
66.04
SOC
01
18
10349
Malar Selvi, J.
BC
Ser
58.68
7
65.68
SOC
01
19
13812
Kasthuri, V.
BC
Ser
58.14
7
65.14
SBC
01
20
10859
Suresh, K.
BC
Ser
59.13
6
65.13
SBC
02
21
15326
Ammani, T.
BC
Ser
56.61

8
64.61
SBC
02
22
15375
Anitha Virgin Kumari, H.
BC
Ser
58.23
6
64.23
SBC
02
23
13493
Gayathiri, M.
MBC
Ser
54.27
7
61.27
SMBC
07
24
12365
Indirani, T.V.
MBC
Ser
54.81
6
60.81
SMBC
01
25
12940
Shanthi, K.
MBC
Ser
52.83
7
59.83
SMBC
02
26
14334
Thangathai, S.
SC
Ser
49.59
9

58.59
SSC
06
27
14287
Vijaya, B.
SC
Ser
51.93
6
57.93
SSC
01
28
15154
Boopathy, K.
SC
Ser
47.79
10
57.79
SSC
05
Note: x ColCode

10. It is seen from the list that one Deepa who figures as Sl.No.4 is a service candidate, who has scored 71.41 marks. She is followed by Cordelia Boaz, who figures as Sl.No.15 and has scored 67.12 marks. Sujjanna A.L. Manuel figuring as S scored 66.85, Sumithra, D. Sl.No.17 has got 66.04, Malar Selvi, J. Sl.No.18 has scored 65.68, Kasthuri, V. Sl.No.19 has scored 65.14, Suresh, K. Sl.No.20 has scored 65.13, Ammani, T. Sl.No.21 has scored 64.61, and Anitha Virgin Kumari, H. Sl.No.22 has scored 64.23. Out of three seats meant for inservice candidates, Cordelia Boaz (67.12), Sujjanna A.L. Manuel (66.85), and Sumithra, D. (66.04) have been accommodated. The three

seats in the open category where service candidates also can compete, Malar Selvi, J. (65.68), Kasthuri, V. (65.14) and Suresh, K. (65.13) have been accommodated. The petitioner has scored 63.60 marks.

11. The question will be now whether Karpagam Shanmugam has been accommodated in the All India Category and if it is so, the seat thus vacated by Karpagam Shanmugam can be given to the writ petitioner.

12. 6 seats have to be created, 3 for inservice and 3 for nonservice candidates in the O.C. Category as per the formula evolved by the Supreme Court. Inservice candidates can compete for all 6 seats, while non-service candidates can compete for only 3 seats.
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Comm. 69% rule of reservation ... 50%
OC 4 ... 7

BC 4 □ filled up ... 2
MBC 3 □ filled up ... 2
SC 3 □ filled up ... 3
ST NIL ... Nil
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Among the candidates, the MBC, SC and BC seats have been filled up. Out of 3 seats meant for inservice candidates, Cordelia Boaz (67.12), Sujjanna A.L. Manuel (66.85), and Sumithra, D. (66.04) have been accommodated. The balance 3 seats in the open category where service candidates also can compete, let us see the position. Malar Selvi (65.68), Kasthuri (65.14) and Suresh (65.13) have been accommodated.

13. Service candidates must get 7 seats in the reservation meant for them. As already noted, they can compete in the open category also. If any of them gets in the open competition, that seat cannot be reckoned for service quota. One Deepa, S. (4) has got admitted onmerit in the open competition quota.

14. From the table at page 12, it can be seen that the petitioner is out of the race in 69% reservation quota. The question is whether she is in the reckoning in the 50% quota. Let us have a look at the 28 candidates selected. Serial No.4 Deepa is a service candidate belonging to BC who gets a seat on merit in the open category. Up to Deepa there are four seats exhausted. 5 to 7 are private candidates who get on their own merit. Thus 7 seats in the open category are exhausted. We are left with 7 seats for service candidates in their open category. For these 7

seats BC, MBC, SC and ST can all compete on merit. This is without prejudice to their respective quotas under 69% as well as 50%. Under 69% quota B.Cs. are entitled to 4 seats. After filling up those seats, the persons wait-listed must be considered for these 7 seats. On the contrary, it is contended by the learned Special Government Pleader Mr. Rajasekharan, that to be considered for the extra 3 seats, the candidates must be eligible even to start with. That is to say, if 50% reservation is applied initially, the candidate must be in the zone of selection. The Supreme Court does not say so. You make selection as per 69% reservation. After filling up those seats, find out the number of seats that had been lost to OC candidates. Fill them up on merit basis. It is not open to the Selection Board to take into consideration the number of candidates who had been taken in as per 3 0% BC quota. In other words, one cannot say that 4 BC candidates had already been taken as per 30% BC quota and therefore only one more can be considered for 50% quota. There must be 3 candidates selected from all categories on merit for the extra 3 seats created.

Open competition/Category □ non-service 69%
First Step
Make the admissions applying the rule of 69% - Let us do that.

No.
of OC(31%) BC(30%) MBC(20%) SC(18%) ST(1%) Seats

---
14 4 4 3 3 -
(1)Cordelia Boaz (1) Kasturi
(2)Sujjanna, A.L. (2) Suresh, K.
Manuel Need not be
(3)Sumithra, D. (3) Ammani, T. considered.
(4)Malar Selvi (4) Anitha Virgin
Kumari
Cut
-off
Marks: 65.68 64.23 59.83 57.79 -

Second Step The Additional seats created by virtue of the orders of the Supreme Court to be filled up with the general category candidates:

50% 18.5% 12.5% 18% Nil
3 - - -

These three seats have to be filled up from the remaining service candidates, on merit. Karpagam Shanmugham (63.88%) and the petitioner herein (63.60%) would be eligible. Karpagam Shanmugham, it is not disputed, has got a seat in the All India Quota. So the petitioner must get it. According to Mr. Rajasekharan, to be eligible to be selected in the open category, her cut off marks is below 65.68 for open category and therefore, she cannot get it. This cannot be correct.

15. Let us now see as to who are the candidates who would have got if 50%, and 31% reservation had been applied. The number of seats will be 4+4 = 8 seats. It would have been up to Anitha Virgin Kumari (64.23). That is to say, 7 persons in the open competition and one from the reserved. The cut off marks would become irrelevant. But, as per 69% reservation, you must have 4 candidates under BC category. We have to select 3 more candidates from BC in the order of cut off marks scored by them. Karpagam Shanmugham (63.88) and the petitioner (63.60) will be there. The petitioner should get the seat irrespective of cut off marks. The very purpose of her being wait-listed becomes meaningless if she is to be denied the seat when there must be 3 seats available. She must be the 23rd candidate. Total seats should add up to 17 for open category service candidates.

16. Consequently, the writ petition is allowed. The petitioner shall be given a seat forthwith. The connected miscellaneous petition is closed. There will, however, be no order as to costs.

Index: Yes
Internet: Yes

IGP

To

1. The Secretary to Government,
Government of Tamil Nadu,
Backward Classes and Most
Backward Classes Welfare
Department, Fort St. George,
Chennai 600 009.

2. The Director of Medical Education,
EVR Periyar High Road,
Kilpauk, Chennai 600 010.

3. The Secretary,
Selection Committee,
Directorate of Medical Education,
162, EVR Periyar High Road,
Kilpauk, Chennai 600 010.

4. The Secretary,
Medical Council of India,
New Delhi.